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## Public Law: International Law

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not be annulled on the ground of his discharge in bankruptcy, and the creditor claimed that its judgment was within Section 17a(2), hence was not discharged. The Supreme Court believing that the court of appeal had insufficient evidence in the record to make its findings, remanded to the trial court for further proof on the issue of fraud. In *League Central Credit Union v. Warman*,<sup>14</sup> where judgment was obtained a few days before defendant got his discharge in bankruptcy (no stay having been applied for in the bankruptcy court), defendant sought to enjoin enforcement of the judgment, and it was held that a preliminary injunction would issue as the order of discharge made out at least a prima facie case.

## INTERNATIONAL LAW

*Joseph Dainow\**

The amount of international activity in Louisiana is not reflected in litigation before the Louisiana courts. Fortunately so. It may be presumed that many international differences and disputes are settled amicably on the advice of counsel for both sides and in accordance with international law, or else they are directed into diplomatic channels for settlement at the governmental level. Accordingly, the case of *Republic of Cuba v. Mayan Lines, S.A.*<sup>1</sup> is one of the infrequent instances of such judicial determination in Louisiana.

In a prior suit by the Mayan Lines against the Republic of Cuba, with attachment of Cuban property in Louisiana, the plea of sovereign immunity had been withdrawn and a judgment was rendered in accordance with a settlement agreement reached by the parties. The present action was instituted by the Republic of Cuba, through a duly authorized local attorney, seeking to annul the money judgment of the prior suit by reason of alleged error, fraud, and ill practice. The lower court dismissed this action on the grounds of lack of procedural capacity because after the break in diplomatic relations between the United States and Cuba the Republic of Cuba had designated the Gov-

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14. 143 So.2d 241 (La. App. 4th Cir. 1962).

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1. 145 So.2d 679 (La. App. 4th Cir. 1962).

ernment of Czechoslovakia as its representative in the United States.

In reversing the decision on the exception of lack of procedural capacity, the court of appeal properly pointed out the distinction between the continuity of "diplomatic relations" and the continuity of "recognition." The break in diplomatic relations did not change the status of Cuba as a "recognized" state and therefore it was entitled under international law and under American law to institute suit in its own name in American state or federal courts.

In the course of its opinion, the court of appeal stated that "once granted, recognition of foreign sovereignty continues until such time as such recognition is expressly withdrawn or cancelled by the appropriate political department of the government concerned."<sup>2</sup> The immediate purpose of this statement placed the emphasis on the point that the judiciary must act in accordance with the position taken by the political department on the matter of recognition. However, the statement as made could leave the impression that withdrawal or cancellation of recognition of a state is as common a practice as breaking of diplomatic relations.

In international law, the recognition of a sovereign state is generally irrevocable.<sup>3</sup> A distinction must be made between the recognition of a *state* and the recognition of the *government* of a state. When there is a change of government within a state, other states may choose among a number of alternative positions. They may recognize the new government and continue the course of previous diplomatic relations; they may not recognize the new government and continue to recognize the diplomatic representatives of the former government as the continuing representatives of the foreign state;<sup>4</sup> or there may be an announcement that as of a certain date the recognition of a former government would terminate and at the same time recognition of the new government would commence.<sup>5</sup>

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2. *Id.* at 683.

3. WILSON, HANDBOOK OF INTERNATIONAL LAW 23 (3d ed 1939). Inter-American Convention on Rights and Duties of States, Montevideo, 1933, art. 6: "Recognition of a state . . . is unconditional and irrevocable." 49 Stat. 3097, 3100 (1933). Sixteen states are parties to this convention, including United States and Cuba.

4. *E.g.*, between 1918 and 1933, U.S.A. accepted as representatives of Russia the emissaries of the former regime until recognition of the Soviet government.

5. *E.g.*, Great Britain's action in recognizing a new Polish government after there had been a Polish government in exile during World War II.

In all of these variations with reference to recognition of new governments, there is never any question about the continuing and irrevocable recognition of the foreign state.

A new *government* which has not been recognized does not have a right to institute suit in an American court,<sup>6</sup> but the Castro government had been recognized by the United States and this is not affected by a break in diplomatic relations.

Thus there are three separate concepts which are distinct from each other: (1) the recognition of a new state, (2) the recognition of a new government in an existing state, and (3) the maintenance of diplomatic relations with the recognized government of a recognized state.

## LOCAL GOVERNMENT LAW

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### OFFICERS AND EMPLOYEES

This area of the subject, which usually yields a bountiful harvest of litigated cases, produced but a single case in the appellate courts during the past term, but this settled an extremely important point. *Foti v. Montero*<sup>1</sup> answered the question of whether, in municipalities having the commission form of government, the employees of each municipal department were to be appointed by the commissioner in charge of the department or by the commission council itself. The action was brought by the mayor and commissioner of public health and safety of the City of Donaldsonville to restrain the enforcement of two ordinances adopted by the majority of the members of the commission council. The first ordinance declared that the council itself had the power to determine the positions to be filled in each department. The second declared that the council itself had the power to appoint and remove all employees of the city. On the date on which these ordinances were adopted, the council adopted a resolution designating the positions to be filled, appointing and assigning individuals to these positions, and fixing the compensation to be

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6. R.S.F.S.R. v. Cibrario, 235 N.Y. 255 (1923).

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1. 243 La. 734, 146 So.2d 789 (1962).